

B. I. Cohen, however, was a member of that firm, and it nowhere appears that he made any objection to their authority to make the transfer. This transfer was made in 1841, and it is not until 1848, that the power under which it was made is questioned. On the contrary, in 1843, Mendez I. Cohen's right to deal with these shares as his property is recognized by the transfer made by him in April of that year to Johnson & Lee, and by their retransfer to him in May following.

The question to be decided is between a *bona fide* purchaser for value and without notice, on the one side, and the general mass of the stockholders on the other. The transfer book which appears to have been very carefully kept, was of course at all times open to the inspection of the trustees, and was, in fact, kept by one of them. It contains the evidence of the title of the shareholders to their stock, and a purchaser might well suppose that his title was good to shares transferred to him upon the book, and permitted to remain in his name without objection for a number of years. It seems to me, that in a question affecting the validity of a transfer under the circumstances of this case, between a *bona fide* purchaser, without notice, and the stockholders generally, that the latter must be concluded by the conduct of the trustees, active or permissive, in suffering the transfer to be made and to stand. It is true, this was a private association and not a corporation, but still trustees were appointed by the agreement, and for the benefit of the stockholders, and I cannot bring myself to think that it would be just to permit the mass of stockholders to exclude an individual stockholder from participation in the fund upon the ground that his title to shares standing in his name was defective when the trustees permitted that title to pass to him, and to remain in his name upon books kept by them for the purpose, this book being the only evidence of title.

The case in some respects is very like the case of the *Farmers and Mechanics Bank of Frederick and others vs. Wayman and Stockett*, decided by the Court of Appeals in December, 1847, 1 *Gill*, 336. In that case the bank had permitted certain shares of stock, held in trust, to be transferred by persons not